



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

February 10, 1939

Hon. Joe J. Fisher  
District Attorney  
San Augustine, Texas

Dear Sir:

Opinion No. O-250  
Re: Fees of County Treasurer

Your request for an opinion on the following questions:

"1. Is the County Treasurer of Newton County entitled to retain one-third of the excess fees over \$2,000.00 until the amount reaches \$3,000.00?

"2. If not, why does Article 3891 say EACH OFFICER named in this CHAPTER?

"3. If not, why would a County Treasurer have to fill out a Sworn Statement as provided for in Article 3897, as to Excess Fees of office?

"4. If not, why would the County Treasurer be allowed to pay for necessary expenses of office, such as premiums on Surety Bonds, Postage, and so forth under Article 3899?"

has been received by this office.

Article 3883, Revised Civil Statutes, entitled Maximum Fees allows and provides certain fees for the officers named therein. This article does not include County Treasurers and has application only to those officers specifically mentioned in the statute.

Article 3891 reads in part as follows:

"Each officer named in this Chapter shall first out of the current fees of his office pay or be paid the amount allowed him under the provisions of Article 3883, together with the salaries of his assistants and deputies, and authorized expenses under Article 3899, and the amount necessary to cover costs of premium on whatever surety bond may be required by law. If the current fees of such office collected in any year be more than the amount needed to pay the amounts above specified, same shall be deemed excess fees, and shall be disposed of in the manner hereinafter provided.

"In counties containing twenty-five thousand (25,000) or less inhabitants, District and County officers named herein shall retain one-third of such excess fees until such one-third, together with the amounts specified in Article 3883, amounts to Three Thousand Dollars (\$3,000). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Fourteen Hundred Dollars (\$1400)."

Article 3899 allows all the actual and necessary expenses incurred by such officer in the conduct of his office, such as stationery, stamps, telephone, premium on official bonds, including the cost of surety bonds for his deputies, premiums on fire, burglary, theft, robbery insurance protecting public funds, traveling expenses and other necessary expenses.

Articles 3891 and 3899 pertain only to those officers named in Article 3883 as these statutes refer both specifically and by implication to Article 3883.

Article 3899b reads in part as follows:

"Section 1. There shall be allowed to County Judges, Clerks of the District and

County Courts, Sheriffs, County Treasurers, Tax Assessors and Collectors, such books, stationery, including blank bail bonds and blank complaints, and office furniture as may be necessary for their offices, to be paid for on the order of the Commissioners Court out of the County Treasury; and suitable offices shall also be provided by the Commissioners' Court for said officers at the expense of the county. And such books and stationery as are necessary in the performance of their duties shall also be furnished Justices of the Peace by said Commissioners Court. Provided all purchases herein must be approved by Commissioners Court, and must be made under the provisions of Article 1659, Revised Civil Statutes of Texas, 1925."

Article 3899b provides offices, office supplies, and office furniture as may be necessary for the officers named therein. The County Treasurer is included in this act and is entitled to the benefits which this statute mentions. However, this statute does not provide for the payment of premiums on surety bonds or any other expenses allowed by Article 3899 except stationery.

Article 3897 reads as follows:

"Each district, county and precinct officer, at the close of each fiscal year (December 31st) shall make to the district court of the county in which he resides a sworn statement in triplicate (on forms designed and approved by the State Auditor) a copy of which statement shall be forwarded to the State Auditor by the clerk of the district court of said county within thirty (30) days after the same has been filed in his office, and one copy to be filed with the county auditor, if any; otherwise said copy shall be filed with the Commissioners' Court. Said report shall show the amount of all fees, commissions and compensations whatever earned by said officer during the fiscal year; and secondly, shall show the amount of fees, commissions and compensations collected by him

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during the fiscal year; thirdly, said report shall contain an itemized statement of all fees, commissions and compensations earned during the fiscal year which were not collected, together with the name of the party owing said fees, commissions and compensations. Said report shall be filed not later than February 1st following the close of the fiscal year and for each day after said date that said report remains not filed, said officer shall be liable to a penalty of Twenty Five (\$25.00) Dollars, which may be recovered by the county in a suit brought for such purposes, and in addition said officer shall be subject to removal from office."

Article 3943 provides, generally, that the commissions allowed to any County Treasurer shall not exceed Two Thousand (\$2,000.00) Dollars annually.

In view of the foregoing statutes, you are respectfully advised that it is the opinion of this Department that the County Treasurer of Newton County is not entitled to retain one-third of the excess fees over Two Thousand (\$2,000.00) Dollars until the amount reaches Three Thousand (\$3,000.00) Dollars, or to retain any amount of such fees over Two Thousand (\$2,000.00) Dollars and that Articles 3891 and 3899 have no application as to the County Treasurer but each County Treasurer must make the sworn statement as required by Article 3897.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams  
Assistant

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APPROVED:

*Gerard C. Mann*  
ATTORNEY GENERAL OF TEXAS